

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

PAULA HEYER,

Plaintiff,

Case No. 23-cv-726-pp

v.

GREGORY FUNDING, LLC,

Defendant.

**ORDER REMINDING PLAINTIFF OF OPTION TO FILE AMENDED
COMPLAINT IN LIEU OF RESPONDING TO DEFENDANT’S MOTION TO
DISMISS (DKT. NO. 6)**

On July 5, 2023, the defendant filed a motion to dismiss the complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Dkt. No. 6. The defendant argues that the court lacks jurisdiction because the complaint refers to “acts, commissions and omissions” occurring during Chapter 13 bankruptcy proceedings and “such matters are core proceedings within the exclusive jurisdiction of the bankruptcy court.” Dkt. No. 6 at 3. The defendant argues that even if the court has jurisdiction over the plaintiff’s federal claims, “certain acts, omissions or commissions related to specific claims sounding in” the Fair Debt Collection Practices Act, Real Estate Settlement Procedures Act and Truth in Lending Act “are barred by the applicable statute of limitations and . . . have no provision for a private right of action.” Id. The defendant argues that the plaintiff fails to adequately plead the elements of a Qualified Written Request (QWR) violation and pleads facts that show she is not entitled to QWR relief. Id.

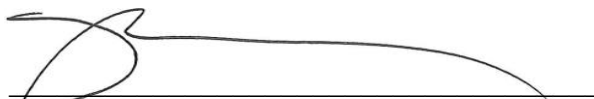
Finally, the defendant argues that the plaintiff fails to “properly plead any of the counts relating to state law remedies.” Id.

Under Civil Local Rule 7(b), if the plaintiff wishes to oppose the motion she must do so within twenty-one days—that is by July 26, 2023. The plaintiff is free to timely file a response to the motion to dismiss, but the court reminds the plaintiff that she has another option—she may file an amended complaint to try to cure the alleged deficiencies. See Runnion ex rel. Runnion v. Girl Scouts of Greater Chi. and Nw. Ind., 786 F3d 510, 522 (7th Cir. 2015) (explaining that a responsive amendment may avoid the need to decide the motion or reduce the number of issues decided). Fed. R. Civ. P. 15(a)(1) allows the plaintiff to file the amended complaint as a matter of course within twenty-one days after service of the responsive pleading.

The court **ORDERS** that by July 26, 2023 the plaintiff shall file either an amended complaint or a response to the motion to dismiss.

Dated in Milwaukee, Wisconsin this 10th day of July, 2023.

BY THE COURT:



HON. PAMELA PEPPER
Chief United States District Judge